Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 755 (MS) OF 2005

Vinlab Export Pvt. Ltd. Bhimtal,
Nainital, through its Manager,
Pawan Kumar, S/o Shri Dhoop Narain Singh,
1/16 Vishwas Khand, Gomti Nagar, Lucknow.

.....Petitioner.

Versus

1. Karan Bahadur,
   aged about 26 years, S/o Sri Mahaveer Bahadur,
   R/o Care of Sri Man Singh, Farm No. 3, Bedi Bhawani,
   Haldwani, District-Nainital.
2. The Commissioner, Workmen Compensation/Deputy Labour Commissioner, Haldwani, District-Nainital.

.....Opp. Parties.

Dated: 29.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Mohd. Khalid, Advocate for the petitioner and Standing Counsel for the respondent no. 2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 21.06.2005 passed by the opposite party no.2. in Case No. WCA/37/2005.

Briefly stated, the claim petition was filed by the respondent no. 1 on the ground that during the course of the employment on 18.09.1997, he received injuries and he was admitted to the Base

Medical College, Haldwani and at the time of the accident, he was getting a salary of Rs. 1200/- per month and he was aged about 18 years and he has claimed the compensation to the extent of Rs. 3 lacs. Along with the application for payment of compensation, an application was filed for condonation of delay. The objections were filed by the petitioner on the ground that there is no provision of condonation of delay. The Claims Tribunal vide order dated 22.06.2005 condoned the delay. The tribunal was of the opinion that on account of the technicalities, the workman cannot be deprived of the right to file the claim petition along with the application under Section 5 of the Limitation Act.

Petitioner has raised the plea that the application has not been properly moved and is not maintainable for non- compliance of the provisions of Section 4-A and 10-A of the Workman Compensation Act. So far as the merits of the claim petition are concerned, the same can be raised in the case itself. However, at present only Section 5 application has to be decided and the tribunal having considered the cause of delay, I don't find any infirmity in the order passed by the tribunal so as to interfere under Article 226/227 of the Constitution of India.

The Apex Court has held in ***M.S. Grewal Vs. Deep Chand Sood (2001) 8 SCC 151*** as under:-

" Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

While deciding the application under Section 5 of the limitation Act, there should be a liberal approach.

In ***N Balakrishnan Vs. M. Krishnamurthy, Suoreme Court & Full bench Rent Cases, 1998 page***

427, it has been held that there should be liberal approach in the matter of restoration and also in condoning the delay. The observations of the Apex Court are quoted below:

> *"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer cause would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spen must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time".*
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> *"It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is*

reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation". While condoning the delay, the court should not forgot the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

Counsel for the petitioner has referred the judgment of ***Obra Thermal Power Station U.P.S.E.B. Obra Vs. Workman Compensation Commissioner Evam Assistant Labour Commissioner, Mirzapur and another 1998(1) T.A.C. Page 472 (All.),*** where it has been held that there should be a liberal approach in condonation of delay and therefore, I am not inclined to interfere under Article 226/227 of the Constitution of India.

In view of the judgment of ***N. Balakrishnan v. M. Krishnamurthy, Supreme Court & Full bench Rent Cases, 1998 Page 427,*** I am not inclined to interfere under Article 226/227 of the Constitution of India.

Accordingly, writ petition lacks merit and is dismissed.

No order as to costs.

(Rajesh Tandon, J.)

29.06.2006

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